

MEMORANDUM

TO: Honorable Legislators

FROM: Elana L. Yeger, Esq. 
Senior Legislative Counsel

DATE: September 27, 2018

RE: Legal Opinion - Res. 416 of 2018 - Authorizing Paid Leave for William Riccaldo

On August 7, 2018, the Legislature unanimously adopted Resolution 416 of 2018, captioned RESOLUTION AUTHORIZING A PAID LEAVE OF ABSENCE FOR WILLIAM RICCALDO TO ACCOMMODATE HIS SERVICE AS CSEA REGION PRESIDENT. In a memo dated August 22, 2018, the County Executive vetoed this resolution, stating that "There is a legal impediment for the approval of this Resolution by the County Executive. Please see attached Legal Opinion from the County Attorney Thomas E. Humbach." For everyone's convenience, and to enable a quick comparison, I have attached a copy of the County Attorney's legal opinion.

I have read the County Attorney's opinion, dated August 28, 2018 that opines "that Resolution No. 416 of 2018 suffers from several legal impediments and is invalid as passed." Having researched the matter, I disagree with the County Attorney's opinion and conclude that the Legislature is authorized to adopt a resolution granting Mr. Riccaldo paid leave to enable him to serve as Regional President for CSEA.

SUMMARY OF OPINION

- I. Based on extensive legal research and cases in Federal, State, and New York courts, paid release does not violate the New York State Constitution's gift clause and is a widespread and widely accepted practice.
- II. Based on General Municipal Law § 92 and County Law § 207, the Legislature possesses the sole authority to grant a leave of absences such as release time, paid or unpaid.
- III. There is no "Separation of Powers" issue since the law gives the Legislature the power to grant release time and direct the appropriate department or commissioner to carry out its policy directives.
- IV. The Resolution does not violate Civil Service Law since:
 - A. The employee was still on release time when the CBA expired in 2016, so the status quo should continue until a new contract is negotiated; and
 - B. To the extent that there was a change to the expired CBA, both the union and the policy-making legislature agree to the change.
 - C. The paid release time was granted pursuant to statutory authority, rather than the collective bargaining agreement.
- V. The resolution demands that CSEA reimburse the county; if that means a contract must be signed, the appropriate executive department will create one that includes reimbursement.

ANALYSIS

Point I: Based on extensive legal research and cases in Federal, State, and New York courts, paid release does not violate the New York State Constitution's Gift Clause and is a widespread and widely accepted practice.

While the County Attorney opines that granting Mr. Riccaldo paid leave of absence is an unconstitutional gift of public money, thorough research shows that this cannot be true.

A. Other states have upheld release time against Constitutional challenges.

While NY courts have never specifically addressed the issue of whether release time is an unconstitutional gift of public monies, several other states with similar gift clauses have and their courts concluded that paid release time is constitutional. In 2017, a NJ court denied a motion for summary judgment that argued that release time was an unconstitutional gift:

Release time provisions have been included in JCEA CBAs since at least 1969. As evidenced by the long life of this statute without the Court's invalidation and without legislative amendment, a presumption exists that this implementation of the statutory right set forth in *N.J.S.A. 18A:30-7* is constitutional.... Similar release time provisions have also been held to withstand constitutional challenge under other state's constitutional gift clause provisions. *See Cheatham v. DiCiccio*, 240 Ariz. 314, 379 P.3d 211 (Ariz. Supreme Ct. 2016) and *Idaho Freedom Foundation v. Ind. Sch. Dist. Of Boise City*, No. CV-OC-2015-15153 (Idaho 4th Dist. Ct. Oct. 25, 2016).

....

Given Plaintiff's steep burden of proof and this Court's determination that the release time provisions in the CBA are not unconstitutional gifts, the Court denies Plaintiff's motion for summary judgment. For the same reason, the Court hereby grants Defendant, JCEA's motion for summary judgment and dismisses this case.

Rozenblit v. Lyles, DOCKET NO. HUD-C-2-17, 2017 N.J. Super. Unpub. LEXIS 3202, *11-13, 23 (Super. Ct. N.J. Chancery Div. Hudson Cty. October 31, 2017). Similarly, the Arizona Supreme Court stated as follows in 2016:

The Gift Clause of Arizona's Constitution bars cities and other public entities from "mak[ing] any donation or grant, by subsidy or otherwise, to any individual, association, or corporation." Ariz. Const. art. 9, § 7. For decades, the City of Phoenix has contracted in collective bargaining agreements with police officers to allow "release time," that is, to pay officers for certain time spent on behalf of their authorized representative (a police union) rather than regular police duties. We hold that the release time provisions at issue here do not violate the Gift Clause.

Cheatham v DiCiccio, 240 Ariz 314, 316, 379 P3d 211, 213 [2016].

The Idaho case was even more explicit. In its Memorandum Decision and Order, the Court held that "the Master Contract and its BEA leave provisions serve a valid public purpose: fostering a harmonious and productive collective bargaining environment, which benefits the District, the teachers and the public... The Court finds no merit in the constitutional challenge to the BEA leave

provisions.” Idaho Freedom Foundation v. Ind. Sch. Dist. Of Boise City, No. CV-OC-2015-15153 (Idaho 4th Dist. Ct. Oct. 25, 2016).

In Pennsylvania, petitioners challenged a school district’s practice of paid release time as violative of their state constitution, particularly when no reimbursement was made by a union to the school district. The petition was eventually dismissed as moot after the Pennsylvania pension administrator revoked the pension accruals where the union did not make the entity whole – implying that it would have been perfectly fine had the municipality been made whole. See Ramos v. Allentown Educ. Assn., 164 A3d 650 [Pa Commw Ct 2016].)

B. Paid release time is clearly constitutional since it is a widespread practice in New York, as evidenced by New York cases in both State and Federal courts.

While NY courts have not specifically addressed the question of whether paid release provisions violate the Gift Clause, it is patently obvious that they do not, as there have been numerous cases addressing issues surrounding employees on such paid leave. A Second Circuit Court of Appeals case arising out of New York has the exact same fact pattern (an Albany employee worked full-time for his union for six years, receiving all benefits except accruals, with the union reimbursing the expenses on a quarterly basis). NY State Law Officers Union v. Andreucci, 433 F3d 320, 323 (2d Cir 2006) (the dispute was whether the employee on paid leave could represent the union in labor matters where Albany County was a party). The paid leave provision itself was not challenged. Another Second Circuit case addressed the issue of whether employees on paid release time were required to sign a log book keeping track of their union activities immediately upon arrival. Clue v. Johnson, 179 F3d 57, 59 (2d Cir 1999). *Clearly the Second Court of Appeals saw no constitutional problem with paid leave, or the provisions themselves would have been challenged.*

Similarly, the Federal District Courts in New York have found no problem with paid leave provisions. See Moriates v. City of NY, 2016 US Dist LEXIS 82565, at *8, n 3 (EDNY June 15, 2016, No. 13-cv-4845 [ENV] [LB]) (supervisor needed more information before certifying union release time); Giglietti v. Bottalico, 2011 US Dist LEXIS 56921, at *9, n 6 (SDNY May 26, 2011) (“a rival union alleged that Metro-North’s payment of ‘release time’ to ACRE officials, including Bottalico, constituted illegal “carrier interference” with employees’ choice of representative in that Metro-North subsidized, and therefore dominated, ACRE. The Board held that ACRE was not dominated by Metro-North, reasoning that “[t]he amount of release time [paid to union officials] is not proof of carrier domination.”) (internal citations omitted).

The New York Appellate Division has also decided cases related to disciplining employees while on paid release time without ever finding the release provisions unconstitutional. See Matter of NY City Tr. Auth. v. Phillips, 162 AD3d 93, 97-98 (1st Dept 2018); Matter of Phillips v. Manhattan & Bronx Surface Tr. Operating Auth., 132 AD3d 149, 151-152 (1st Dept 2015).

Clearly, the resolution awarding Mr. Riccaldo paid release time is constitutional and does not violate the Gift Clause since:

- 1) other state courts considering a constitutional challenge to paid leave release time have not found it to be unconstitutional;
- 2) no New York federal or state court considering fact patterns with paid leave provisions has found that such provisions violate the Gift Clause - not the Second Circuit Court of Appeals, not any District Court, and not the Appellate Division; and
- 3) it is such a widespread and accepted practice in New York.

Point II. General Municipal Law §92 and County Law §207 state that the Legislature possesses the sole authority to grant leaves of absence such as release time, paid or unpaid.

While the County Attorney opines that, based on case law from the Appellate Division and opinions from the NYS Comptroller, the Legislature has gone beyond the authority granted to it in granting Mr. Riccaldo paid release time, a more careful reading of the state law, NY case law and Comptroller opinion clearly shows that the Legislature has the sole authority to grant such leaves of absence.

To begin with the black letter law, GML §92 states as follows, in pertinent part:

General Municipal Law §92. Vacations, sick leaves and leaves of absence of officers and employees

1. The governing board of each county, city, town, village, school district, and of each fire district or other district corporation and of each civil or political division of the state by local law, ordinance or resolution, or in the city of New York the mayor by order may grant vacations, sick leaves and leaves of absence to its officers or employees with or without pay and adopt rules and regulations in relation thereto.

Notwithstanding any other provision of law, any such governing board or mayor may also in like manner provide for cash payment of the monetary value of accumulated and unused vacation time or time allowances granted in lieu of overtime compensation standing to the credit of its officers and employees at the time of their separation from the service, or in case of death in service, to be paid to their beneficiaries.

2. An employee of a county, city, town, village, school district, and of each fire district or other district corporation and of each civil or political division of the state who is elected by an employee organization certified or recognized by the employer pursuant to article fourteen of the civil service law may be granted a leave of absence from their regular position for the purpose of serving with such employee organization.

...

(emphasis added). In addition to this section of state law that applies to all municipalities, there is another section of state law that specifically applies to counties. County Law §207 states as follows, in pertinent part:

County Law§ 207. Vacations; sick leaves; leaves of absence

1. Notwithstanding the provisions of any general law other than this chapter or of any special law to the contrary, the board of supervisors shall have power to fix and regulate the granting with or without pay of vacations, sick leaves and leaves of absence, to employees paid from county funds. The employing officer in any department, board or commission may grant to such employees vacations, sick leaves and leaves of absence under rules fixed by the board of supervisors.

2. Vacations with pay shall not be for less than two weeks in each year for all employees who shall have been in the employ of the county at least one year. Leaves of absence shall not be in excess of one year.

(emphasis added). Furthermore, there is case law from the NY Appellate Division that specifically cites to County Law §207 for the proposition that the Legislature is empowered to grant leaves of absence to employees with or without pay. See Koenig v. Morin, 56 AD2d 254, 256 (4th Dept 1977);

Reese v. Lombard, 47 AD2d 327, 329-330 (4th Dept 1975) (“Section 14 of article XIII of the Constitution provides that the State Legislature shall have authority over hours and wages of county employees. That power has been specifically delegated to the local legislature by statutes under which the county may determine ... vacations and sick leaves (§ 207... The concurrence of the County Legislature in this agreement was necessary because it contained provisions ... which only the county, acting through its legislature, could authorize.”)

Despite the unambiguous language in these statutes and these Appellate Division cases, the County Attorney cites two other cases for the proposition that the Legislature cannot grant a paid leave of absence to a single employee as was done here. However, the two Appellate Division cases he refers to involve different facts and do not apply to Mr. Riccaldo’s case. In Coates v. New York, 49 AD2d 565 (2d Dept 1975), the Court found that GML §92 did not enable the City of New York to give cash payments for unused sick time upon retirement because the collective bargaining agreement in that case did not authorize such payments. The case had nothing to do with granting sick time or a leave of absence.

The second case cited to in the County Attorney’s opinion, Teachers Asso., Cent. High Sch. Dist. v. Bd. of Educ., 34 AD2d 351, 352 (2d Dept 1970), is even less applicable and in fact supports the finding that the County is permitted to grant paid release time. In this case, the court found that the Board was required to pay a deceased employee’s unpaid sick leave because it had agreed to do so as part of a contract with the union. *Id.* at 354-56. The court also rejected a challenge that this was an unconstitutional gift because GML §92 did not authorize this payment at that time. *Id.* at 356-57. In other words, the court found that granting paid sick time pursuant to GML §92 was not an unconstitutional gift.

Finally, the County Attorney cites to a 1960 Opinion from the NYS Comptroller as stating that GML §92 only permits a governing board to grant sick leave benefits to individuals as part of a broadly applicable policy. However, this does not apply here. First, obviously, release time cannot be given to all employees, or there would be no workers. Second, the Legislature’s authority to grant paid leave does not only come from GML §92, but also from County Law §207. The Opinion does not discuss the County law because it is responding to a Town inquiry and, according to the Opinion, the GML provision is “the sole authority for the allowance of paid sick leave on the part of the town...” Lastly, the 1960 opinion was written before the case law discussed previously, and case law controls over Agency opinions.

Opining that the Legislature is not authorized to grant paid leaves of absence is perhaps the most disingenuous argument that the County Attorney makes in his opinion. He states “Mr. Riccaldo is singled out for the benefit conferred pursuant to GML § 92 and the similarly worded County Law § 207. As with [the employee in the Comptroller’s Opinion], it is my opinion that the County Legislature may not authorize paid leave of absence for a particular employee in the absence of a pre-existing policy permitting such a leave.” Logically, this must also mean that the Legislature is not permitted to authorize unpaid leave of absence pursuant to GML §92 in the absence of a pre-existing policy. Yet, on July 6, 2018, the County Attorney forwards to Mr. Riccaldo’s attorney a letter from Mr. Gruffi stating, “pursuant to N.Y. General Municipal Law §92, the County offers you a leave of absence to pursue the work of your elected office in a labor organization.” In a letter dated July 13, 2018 from Mr. Gruffi to Mr. Riccaldo, Mr. Gruffi explains that “the County, under General Municipal Law § 92(2) will place you on an unpaid leave of absence per this statute.” Furthermore, in an email from the County Attorney to Mr. Riccaldo’s attorney on July 19, 2018, Mr. Humbach states, “With respect to Mr. Riccaldo’s position, the County has, in accordance with GML § 92(2)

and County Law § 207, placed Mr. Riccaldo on leave of absence. The leave of absence is unpaid.”¹ So, according to the County Attorney, the administration is authorized to grant leave pursuant to GML §92, but the Legislature isn’t. The administration ignores the actual black letter law of the statute that authorizes only the Legislature to grant paid or unpaid leave, and instead takes it upon itself to issue an unpaid leave - a true violation of the separation of powers and a violation of state law. Let’s be clear, the administration, with the County Attorney’s blessing, already agreed to grant a leave of absence to Mr. Riccaldo pursuant to GML § 92, a power that is solely reserved for the Legislature via resolution or local law. Yet it is the Legislature’s duly adopted resolution that the County Attorney opines is not authorized.

Since the black letter law and NY Appellate Division case law clearly state that the Legislature has the authority to grant paid leaves of absence, there can be no question that the Legislature has the authority to grant Mr. Riccaldo paid release time as contemplated here.

POINT III: There is no “Separation of Powers” issue since the law gives the Legislature the power to grant release time and direct the appropriate department or commissioner to carry out its policy directives.

In a related argument, the County Attorney opines that the Legislature, in adopting a resolution granting Mr. Riccaldo paid release time, has infringed on the County Executive’s powers and violated the doctrine of separation of powers. He bases this argument on the Charter powers granted to the County Executive involving the management and administration of County government. This argument fails for the following two reasons: 1) as noted previously, statutory and case law give the Legislature the specific authority to grant a paid leave of absence such as Mr. Riccaldo’s paid release time; and 2) while a County Charter can supersede some NYS laws, the only GML §92 power given to the County Executive in our Charter is the power to authorize sick leave extensions, given in §C3.02(k). All other statutory powers granted the Legislature in GML §92 and County Law §207 – including paid leaves of absence – remain with the Legislature.

The County Attorney’s opinion further cites to the Rockland County Civil Service Rules, Rule XIX for the proposition that only Mr. Gruffi, the “appointing authority” for the Department of General Services may grant a leave of absence to employees in his department. However, Rule XIX deals only with a “leave of absence without pay” and is unrelated to the statutory authority giving the Legislature the power to grant paid release time.

Furthermore, it in no way usurps the County Executive’s power when the Legislature, in a legally adopted resolution or local law, directs employees of the Executive Branch to carry out its policy considerations. In a case where a county’s budget director failed to implement a legislative policy as directed by the Legislature, the Court of Appeals clearly stated:

the executive branch may not override enactments which have emerged from the lawmaking process. It is required to implement policy declarations of the Legislature, unless vetoed or judicially invalidated. This the executive failed to do. The Budget Director's "order does not direct that a [legislative] policy be executed in a manner prescribed by" the Legislature; rather, "it directs that [an executive] policy be executed in a manner prescribed by the [executive]" (*Youngstown Co. v Sawyer*, 343

¹ Copies of these three communications are attached for your convenience.

U.S. 579, 588). Such a usurpation of the legislative function cannot receive judicial sanction.

.... A failure to fulfill this obligation violates the unequivocal command of the Constitution -- it is not subject to academic debate concerning the proper division of governmental powers.

County of Oneida v Berle, 49 NY2d 515, 523 (1980). In other words, **if the Executive branch fails to implement a legislative policy it is actually a usurpation of the legislative function**, absent a veto that it is not overridden.

There are numerous New York cases, from both the Court of Appeals and the Appellate Division, that clearly show that the Legislature is permitted to direct the Executive Branch to carry out its will. See Gazza v. NY State Dept. of Env'tl. Conservation, 89 NY2d 603, 612 (1997) ("To implement this policy, the Legislature **directed** the Commissioner of Environmental Conservation to inventory all tidal wetlands in the State of New York (ECL 25-0201)"); see also Consol. Edison Co. v. Dept. of Env'tl. Conservation, 71 NY2d 186, 195 (1988) ("such statutory language is entirely consistent with the position taken by DEC and the Commissioner that the Legislature sought to **direct** the agency to address a specific problem area that had not previously been regulated"); Pharm. Mfrs. Asso. v. Whalen, 54 NY2d 486, 494-495 (1981) ("Similarly, we cannot say that the Legislature acted unreasonably in **directing** the Department of Health to rely on, although not to defer to, the FDA's specific findings of therapeutically equivalent drug products in compiling New York's list of permissible generic substitutes."); People ex rel. Doscher v. Sisson, 222 NY 387, 396 (1918) ("the legislature then **directed** the commissioner" (of excise taxation)...); Mautsewich v. United States Gypsum Co., 217 NY 593, 598 (1916) ("The legislature, by **directing** the commissioner of labor to see that every necessary precaution is taken to insure the safety and health of employees employed in the mines and quarries and in the construction of tunnels of the state and to prescribe rules and regulations therefor, intended to supplement the common-law rules relating thereto and thereby further to insure the safety of those employed in such dangerous employments."); Birmingham v. Rochester C. & B. R. Co., 137 NY 13, 19 (1893) ("In 1839, by chapter 207, the legislature **directed** the canal commissioners to construct and thereafter maintain at the public expense road and street bridges over the canal in all places where such bridges had been theretofore constructed, if in their opinion the public convenience required it."); Matter of Jimenez v. NY State Dept. of Taxation & Fin., 143 AD3d 1221, 1221 (3d Dept 2016) ("The year 2013 also saw the Legislature **direct** respondents Commissioner of Taxation and Finance and Commissioner of Motor Vehicles to collaborate on "a program to improve tax collection through the suspension of drivers' licenses of taxpayers with past-due tax liabilities equal to or in excess of" \$10,000"); Matter of Reconstruction Home & Health Care Ctr., Inc. v. Daines, 65 AD3d 786, 786 (3d Dept 2009) ("In response to this enactment, the Legislature **directed** the Department of Health to exclude an amount for prescription drug costs from the Medicaid rates paid to nursing homes for individuals dually eligible for Medicare and Medicaid (see L 2005, ch 58, part C, § 25).") Childs v. Bane, 194 AD2d 221, 224 [3d Dept 1993] "The Legislature **directed** defendant State Commissioner of Social Services (hereinafter Commissioner) to promulgate emergency regulations to implement the statutory amendment (L 1992, ch 41, § 165 [p])"; Weinhandler v. Blum, 84 AD2d 716, 717 (1st Dept 1981) ("We further note that the Legislature has **directed** the Department of Social Services...").

Given that there are numerous Court of Appeals cases going back 125 years upholding legislation directing commissioners and departments to carry out legislative instructions, there is no reason that Rockland County government should be treated any differently. In fact, the County Attorney himself

has used such language in resolutions that he has drafted directing members of the Executive Branch to carry out specific instructions: “the Rockland County Commissioner of Finance shall disburse, in accordance with this resolution...” Thus, it is plainly obvious that merely directing employees of the Executive Branch of government to carry out otherwise lawful policy dictates from the Legislature does not violate or in any way implicate the separation of powers doctrine.

Since State law grants the Legislature the authority to grant leave such as paid release time, nothing in the County Charter or Rockland County Civil Service Laws changes or supersedes that authority, and the Legislature is permitted to direct the Executive Branch to carry out its will, there is no issue with separation of powers and the Legislature clearly has the authority to grant Mr. Riccaldo paid release time as contemplated here.

POINT IV: The Resolution does not violate Civil Service Law

Almost as an afterthought, the County Attorney alleges that granting Mr. Riccaldo paid leave time may violate Civil Service Law because it is a special deal outside the purview of the collective bargaining agreement that expired in 2016. The relevant section of Civil Service Law §209-a is as follows:

1. Improper employer practices. It shall be an improper practice for a public employer or its agents deliberately ... (e) to refuse to continue all the terms of an expired agreement until a new agreement is negotiated, unless the employee organization which is a party to such agreement has, during such negotiations or prior to such resolution of such negotiations, engaged in conduct violative of subdivision one of section two hundred ten of this article...

However, this argument fails for several reasons: 1) the employee was still on release time when the CBA expired in 2016, so the status quo should continue until a new contract is negotiated; 2) to the extent that there was a change to the expired CBA, both the union and the policy-making legislature agree to the change; and 3) the resolution granting Mr. Riccaldo paid release time was done pursuant to GML §92 and County Law §207, not the collective bargaining agreement.

A. The employee was still on release time when the collective bargaining agreement expired in 2016, so the status quo should continue until a new contract is negotiated.

As the Court of Appeals has explicitly held, Civil Service Law §209-a(1)(e) was put into place, first by the Public Employee Review Board (“PERB”) and then by the NYS Legislature, to maintain the “status quo.” See Matter of Professional Staff Congress-City Univ. of NY v. NY State Pub. Empl. Relations Bd., 7 NY3d 458, 466 (2006). This was done to prevent a municipality from unilaterally changing terms of a collective bargaining agreement once it expired. If they could change terms unilaterally, it would give the municipality an incentive to drag its feet on negotiations. In Mr. Riccaldo’s case, he was on release time when the collective bargaining agreement in question expired in 2016, so Civil Service Law § 209-a(1)(e) therefore serves to freeze the release time at the moment the collective bargaining agreement expired, at which time the provision allowing paid release time was still in effect. It makes no sense to fail to come to terms on a new contract for so long, then claim the contract provision that could well have been renegotiated in that time is now dead due to this failure. See e.g. Town of Southampton v. NY State Pub. Empl. Rels. Bd., 2 NY3d 513, 518 (2004) (municipality could not avoid paying grievance award that expired by its terms on December 31, 1996 based upon 1992-1994 contract, because “status quo” applied to arbitration

award as well). Of course, the duties that accrue to the county also include past practices, as the release time provision must be considered. *Id.* As the Court of Appeals stated, this “fosters the finality and harmony that the Taylor Law was intended to achieve by maintaining the extant terms and conditions of employment rather than looking back to what existed before impasse resolution.” *Id.* at 523. Allowing the employee to continue to receive what he had when the contract expired is the best way to live up to the law and PERB interpretations.

B. To the extent that there was a change to the expired CBA, both the union and the policy-making legislature agree to the change.

It is patently obvious that parties may agree to do something that is not covered in a separate agreement between the parties. If a contract provision expires, there is nothing to prevent the parties to the contract to mutually agree to continue the provision. The Legislature is legally empowered to make this policy choice, subject to veto and override.

C. The paid release time was granted pursuant to statutory authority, rather than the collective bargaining agreement.

In reality, the entire argument that the resolution granting Mr. Riccaldo paid release time may violate Civil Service Law is a red herring, as the resolution has nothing to do with the collective bargaining agreement; rather, it was done pursuant to state law – GML §92 and County Law §207. As already explained, the Legislature is entirely within its power to grant paid release time pursuant to statutory law as well as case law. Furthermore, given that the County Attorney approved the unpaid leave pursuant to GML §92, it is disingenuous at best, and hypocritical at worst, for the County Attorney to now argue that the resolution passed by the Legislature pursuant to GML § 92 granting Mr. Riccaldo a paid leave of absence violates Civil Service Law. After all, in July, the administration, with no authority whatsoever, extended an unpaid leave of absence to Mr. Riccaldo pursuant to that same statute.

POINT V: The resolution demands that CSEA reimburse the county; if that means a contract must be signed, the appropriate executive department will create one that includes reimbursement.

In another throw-away argument, the County Attorney notes that “although the Legislature represents that CSEA commits to compensating the County, there is no current agreement supporting that contention. At this point, any money that CSEA would pay the County would be a gift to the County, not a contractual payment.” As noted previously, the Legislature has the authority to direct County Commissioners to implement policy. The resolution states “that the Commissioner of Personnel is hereby authorized to issue a Paid Leave of Absence...” contingent upon conditions. Obviously, in order to do so, there must be a contract drafted and signed between the County and CSEA memorializing the contractual obligations. It is not necessary for the Legislature to dictate each step necessary to accomplish its policy determinations. The fact that the contract has not yet been drafted and signed is in no way a legal problem with the resolution.

CONCLUSION

There is no legal impediment to implementing Resolution No. 416 of 2018, and the Legislature is not legally prevented from overriding the County Executive's veto of this resolution if it so wishes.

Enc.

cc: Laurence O. Toole, Clerk to the Legislature
Mary Widmer, Deputy Clerk to the Legislature
Alejandra Silva-Exias, Legislative Counsel
Thomas E. Humbach, County Attorney

Rockland County

Ed Day, Rockland County Executive

OFFICE OF THE COUNTY EXECUTIVE

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Edwin J. Day
Rockland County Executive

ROCKLAND COUNTY LEGISLATURE
AUG 29 P 2:51
OFFICE OF THE CLERK

TO: Laurence O. Toole
Clerk to the Legislature

FROM: Edwin J. Day
County Executive

DATE: August 22, 2018

RE: **Resolution No. 416 of 2018** Resolution Authorizing A Paid Leave Of Absence
For William Riccaldo To Accommodate His Service As CSEA Region President

I am returning herewith the above-cited Resolution DISAPPROVED.

According to the County Attorney Thomas E. Humbach, "There is a legal impediment for the approval of this Resolution by the County Executive." Please see the attached Legal Opinion from County Attorney Thomas E. Humbach.



Edwin J. Day
COUNTY EXECUTIVE

OFFICE OF THE COUNTY ATTORNEY
Thomas E. Humbach
County Attorney

TO: Edwin J. Day, County Executive

FROM: Thomas E. Humbach, County Attorney *TH*

DATE: August 28, 2018

RE: *Legal Opinion – Resolution No. 416 of 2018 – Paid leave of absence for William Riccaldo*

ATTORNEY CLIENT
PRIVILEGED MATTER

Summary

It is my opinion that Resolution No. 416 of 2018 suffers from several legal impediments, and is invalid as passed.

In brief, the resolution, which resolves to give Mr. William Riccaldo a paid leave of absence from County service is, in my opinion, invalid because:

- Under the circumstances, the paid leave of absence embodied in the Resolution is a gift of public funds barred by the New York State Constitution, Article VIII, Section 1;
- The County Legislature does not have the power, under either NYS County Law § 207 or General Municipal Law § 92 to grant a paid leave of absence to an individual in the manner it did here; and
- Under the circumstances of this matter, the County Legislature is barred by the separation of powers embodied in the County Charter, from legislating in a manner that interferes with the actions of the executive branch of government by directing the day to day activities of the administration.

This memorandum is confidential, attorney client privileged matter intended solely for the recipients. Any unauthorized distribution of this opinion beyond the intended recipients, is a violation of the County Code of Ethics.

See RCC § 66-3(B)

Furthermore,

- the arrangement appears to violate NYS Civil Service Law § 209-a (a/k/a the Triborough amendment to the Taylor Law), because it: (a) is an end-around the expressly stated terms of the existing agreement to which the County and the CSEA are bound (i.e. that a single employee be limited to 10 years of "release time"), and; (b) is evidence of a private negotiation of a contractual benefit for an single person without submitting the matter to collective bargaining through the appropriate union representatives;
- it gives specific direction to act to an officer employed in the executive branch of government, which is beyond the power of the Legislature; and
- the quasi-contractual contingencies of the legislation, including the requirement that the CSEA will, in the absence of a contractual obligation, pay the County certain sums, and that the Legislature guarantees it will renew this Legislation until Mr. Riccaldo no longer holds an elected union position, have no substance or are invalid. There is no agreed means for the CSEA to make the payments, and this Legislature may not bind itself or future Legislatures/governments through contract. The guarantee is only memorializing of present intentions with no force of law to ensure the term is followed.

Background

In June 2008, the County Legislature ratified a Memorandum of Agreement (MOA), later incorporated that MOA into the CSEA collective bargaining agreement as Article XX, paragraph 20. In substance, that MOA provided that if any employee of the County was elected as an officer of the CSEA, that County employee could choose to take "release time" from County employment to attend to union duties for up to ten years. During that release time, according to the contract, the CSEA would compensate the County for all expenses related to the employment of the officer on release time.

In January 2008, Mr. William Riccaldo was elected as an officer of the CSEA. To the best of my understanding, Mr. Riccaldo was, at the time, a provisional employee in the Department of General Services. In January 2008, he was granted administrative leave. However, in June 2008, upon the ratification of the MOA, he opted to take the release time described in the MOA.

In 2018, the maximum period for release time permitted by the MOA expired.¹ At the time of the expiration, the amount the County was paying to Mr. Riccaldo, in salary and benefits, was approximately \$120,000 per year.

¹ It is a matter of debatable contract interpretation as to whether the 10-year period expired in January 2018, ten years from the effective date of the retroactive term of the MOA, or June 2018, ten years from the date of its

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See RCC § 66-3(B)

The County, by a letter from the County Attorney to Mr. Riccaldo, written on behalf of the appointing authority, the Director of Facilities, requested that Mr. Riccaldo return to work. Mr. Riccaldo's counsel called the County Attorney in response to the letter, objecting to the demand and indicating that it was within the power of the County to grant a leave of absence under the NYS County Law § 207 and NYS General Municipal Law § 92. Following the call, the Director of Facilities placed Mr. Riccaldo on unpaid leave of absence. Mr. Riccaldo remains on unpaid leave of absence from his provisional position at the time this opinion is written.

On July 10, 2018, the County Legislature passed the Resolution that is the subject of this opinion. In substance that Resolution, attached, resolves to grant Mr. Riccaldo one year of paid leave of absence, which the County Legislature pledges to renew yearly until Mr. Riccaldo no longer requires it, and directs the Commissioner of Personnel to take all necessary steps to enact the resolution. It also sets forth three conditions, described as contingencies: first, that Mr. Riccaldo forfeit all vacation, sick time and other similar accruals; second, that the CSEA must repay the County for the expenses of Mr. Riccaldo's employment; and third, that Mr. Riccaldo give 45 days notice before returning to work for the County.

Analysis

In reviewing the Resolution, several points bear analysis.

First, determining if the grant of a paid leave of absence under the present circumstances a gift of public money.

Second, determining the scope of the County Legislature's power to grant a paid leave of absence to a particular individual, on a particular occasion, which individual is in a unique circumstance, versus creating a policy or ratifying a contract term applicable as a rule applying to a class of persons.

Third, determining if the County Legislature has the power, in this case, to act in an administrative capacity to manage the day to day employment conditions of an individual in a department, or to direct a specific act of a Commissioner in the Executive Branch.

I conclude that, in my opinion, based upon the facts and authorities available to me, that:

- Under the circumstances, the paid leave of absence embodied in the Resolution is a gift of public funds barred by the New York State Constitution, Article VIII, Section 1;

ratification. However, the difference is insignificant as the County acted upon the expiration after the later of the two dates, removing any doubt as to the condition of expiration.

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- The County Legislature does not have the power, under either NYS County Law § 207 or General Municipal Law § 92 to grant a paid leave of absence in the manner it did here; and
- Under the circumstances of this matter, the County Legislature is barred by the separation of powers embodied in the County Charter, from legislating in a manner that interferes with the actions of the executive branch of government by directing the day to day activities of the administration.

In addition to these salient points, the nature of the "contingencies" of the Resolution, will be discussed to determine the mechanics of enacting its provisions; and the matter of the guarantees and promises in other portions of the Resolution shall be discussed.

A. *The grant of the paid leave of absence is a gift of public funds*

The Constitution of the State of New York, Article VIII, Section 1, prohibits gifts of public funds to private individuals. The grant of a paid leave of absence, not incidental to a condition of employment is, in my opinion, a prohibited gift of public funds.

The New York State Court of Appeals summed it up well in *Boyd v Collins*, 11 NY2d 228, 234 [1962], stating,

If school board members can avoid embarrassment by paying a year's salary [during which time the teacher was not expected to report to work] to get rid of a teacher, then a board can pay such salary for 5 years or for life. Where would board members ever get such a power?

Also, "[a]n employee who has not worked has not delivered consideration for the payment of wages." *Golomb v Bd. of Educ.*, 106 Misc 2d 264, 266 [Sup Ct, Kings County 1980].

As such, it is my opinion that the paid leave of absence to Mr. Riccaldo embodied in the Resolution is also prohibited.

It is uncontroverted to me that, since at least 2008, William Riccaldo has not performed any actual work for the County of Rockland. There is no indication to me that Mr. Riccaldo intends to work for the County at any time in the future. Also, the Resolution fails to require any service by Mr. Riccaldo to the County in return for the paid leave of absence and neither the Resolution nor any other information known to me expresses that there is any benefit to the County government granted in exchange for the paid leave.

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See RCC § 66-3(B)

The New York State Constitution, Article VIII, Section 1, states that,

The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking . . .

This "gifts and loans clause", as it is often referred to, prohibits the County from making payments in the absence of any return from the person or entity being paid.

"The courts have recognized that the State and its municipalities in granting pensions, vacations or military leave are not conferring gifts upon their employees, but that essentially the promised rewards are conditions of employment -- a form of compensation withheld or deferred until the completion of continued and faithful service. *Teachers Asso., Cent. High Sch. Dist. v Bd. of Educ.*, 34 AD2d 351, 353-354 [2d Dept 1970].²

As summed up by the Southern District of New York in *Blatt v Fashion Inst. of Tech.*, 1989 US Dist LEXIS 9185, at *12,

The relevant question is whether the payment constitutes a gift of public funds, and if consideration other than the rendering of services was furnished by the employee, no violation of Article VIII, § 1 occurs.

The New York State Court of Appeals has framed it similarly, holding in *Board of Educ., Union Free School Dist. No. 3, Town of Huntington v. Associated Teachers of Huntington*, 30 N Y 2d 122, 127,

The validity of a provision found in a collective agreement negotiated by a public employer turns upon whether it constitutes a term or condition of employment.

See also, *Syracuse Teachers Asso. v Bd. of Educ.*, 42 AD2d 73, 75 [4th Dept 1973].

In this case, there does not appear to be any consideration whatsoever for the grant of paid leave of absence. The County government receives no work from Mr. Riccaldo in return for the paid leave of absence. I am informed that for the past ten years, Mr. Riccaldo has dedicated 100% of his time to pursuits other than serving the County government. While acting as an elected union official may be a beneficial service to many, it is not employment by, or service rendered to, the County government.

Thus, the present proposal by the Legislature, to pay Mr. Riccaldo to go do something else other than serve the County government, for an indefinite period of time, does not offer consideration to the County, nor does it constitute a term or condition of employment.

² The courts have treated matters concerning sick leave, vacation and other types of leave and benefits of employment uniformly. Any given case cited in this memorandum, may refer to benefits other than leave with pay, but the theory behind the analysis remains the same.

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See RCC § 66-3(B)

It is unquestioned that the County is permitted to pay people for time they do not work. That includes time for sick leave, vacation, education, and other similar time off, including paid and unpaid leaves of absence. See NYS County Law § 207 and GML § 92.

As noted above, such benefits must be earned as a part of the terms and conditions of employment. Simply because this is a union matter does not change that rule. The Taylor Law does not authorize a public board to give away public funds -- an act forbidden by section 1 of article VIII of the New York State Constitution. While it is a duty of a government to employ people and to pay them reasonable compensation through salary and benefits, it must be earned.

Paying a public officer or employee for services not rendered is an unconstitutional gift of public moneys. In the matter of *Boyd v Collins*, 11 NY2d 228, 234 [1962]³ in order to avoid the necessities of proper disciplinary procedures, a school board gave a teacher a one year leave of absence. The Court found the practice to be a prohibited gift of public money, stating

If school board members can avoid embarrassment by paying a year's salary to get rid of a teacher, then a board can pay such salary for 5 years or for life. Where would board members ever get such a power?

See also, *Hansell v Long Beach*, 61 AD2d 84, 89 [2d Dept 1978], (a contract provision which was beyond the powers of a board to agree to "offends the constitutional prohibition against gifts of public moneys (NY Const, art VIII, § 1)").

With sick or vacation time, or similar accruals, it is expected that the vast majority of an employee's time would be dedicated to work for the County. What is different here is that none of Mr. Riccaldo's time will be dedicated to the County. General Municipal Law § 92 envisions granting leave time where an employee is elected as an officer of a union, and occasional leave would be expected, where most of the time was being spent on County work. However, it flies in the face of the gifts and loans clause to pay an employee to work full time for a private corporation like the CSEA.

An employee who has not worked has not delivered consideration for the payment of wages. *Golomb v Bd. of Educ.*, 106 Misc 2d 264, 266 [Sup Ct, Kings County 1980].

Why, one asks, is this arrangement even sought? Why does the CSEA not simply pay Mr. Riccaldo directly, rather than run his salary and benefits through the proxy of County government?

The answer was given by Legislative Counsel at the Budget & Finance Committee Meeting of July 29, 2018. The reason given was, so that Mr. Riccaldo, who does not work for the County or

³ *Boyd v. Collins*, 11 N.Y.2d 228, 228 N.Y.S.2d 228 (1962), overruled on other grounds, *Abramovich v. Board of Education*, 46 N.Y.2d 450, 414 N.Y.S.2d 109, cert. denied, 444 U.S. 845 (1979)

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the State, can get the retirement and pension benefits offered to County and State employees. This includes both the pension based upon his salary, and the County's generous health insurance benefit, offering equivalent health insurance to all employees who retire from the County after 5 years of service.

Both the past arrangement through the CBA and the proposed Resolution both hinge on the CSEA paying the entirety of the County's out-of-pocket costs for having Mr. Riccaldo on the payroll. It may be rationalized that the County is receiving consideration for this arrangement through the receipt of the money from the union, required both under the former contract and under the proposed resolution. It is questionable whether "breaking even" is a benefit to the County.⁴

Even if unwittingly and through a misconception of the circumstances, a government exercises a power which it does not possess, that of paying out money to a person for which the employee rendered no service, it is a direct violation of the constitutional ban against gifts of public moneys. *Moses v Bd. of Educ.*, 59 Misc 2d 318, 320 [Sup Ct, Kings County 1969].

Moreover, as discussed above, the County and the State will have payment obligations which will run long past the time Mr. Riccaldo is "employed" by the County, which obligations for pension and health insurance will not be reimbursed and which will not have been earned by Mr. Riccaldo by service to the County or the State.

No case has ever gone on to analyze such a situation. It would be surprising to find that a court would favor granting the generous retirement benefits provided by the County and State, at the expense of taxpayers, to a person who for over a decade has reaped the benefit of accruing time into the County and State retirement system, without actually working for the County or the State.

B. *Under the present circumstances, the County Legislature does not possess the authority to grant the benefit of paid leave of absence to a single employee*

With respect to the validity of the legislation, I believe that the Legislature has gone beyond the authority granted to it in granting this unlimited paid leave to an individual employee.

As set forth by the State Comptroller in Opinion 60-659, General Municipal Law § 92 does not provide a blanket authorization for a board to grant leave benefits to individuals, it may only do so as part of a broadly applicable policy.

In the underlying facts of Opinion 60-659, a town board sought to pass a resolution to authorize paid sick leave for a particular per diem employee.

⁴ Upon this analysis, I have doubts as to whether or not the prior, contractual arrangement was itself legal. Even matters enshrined in a collective bargaining agreement can be invalid under the gifts and loans clause. See *Boyd v Collins*, 11 NY2d 228, 234 [1962].

In construing that statute [GML § 92] this Department has expressed the opinion that a city may, by resolution, adopt a reasonable plan of sick leave. In that opinion, the view was expressed that the plan must apply uniformly and not to permit discrimination within the various classes of employees to which it might be applicable.

This opinion follows the thought in *Coates v New York*, 49 AD2d 565, 566 [2d Dept 1975], in which the Appellate Division, Second Department recognized that under Section 92, New York City's Legislature had the power to enact code provisions pursuant to which cash payments in certain instances can be made to employees as a part of a collective bargaining agreement. (citing *Teachers Asso., Cent. High Sch. Dist. v Bd. of Educ.*, 34 AD2d 351 [2d Dept 1970])

There is no case interpretation of Section 92 in which the benefit of leave is permitted to be given to a single employee in the absence of a policy applicable to a whole class, by a provision of a collective bargaining agreement, statute or other lawful means. See also *Syracuse Teachers Asso. v Bd. of Educ.*, 42 AD2d 73, 76 [4th Dept 1973], in which the court recognized the validity of leave provisions for an entire class of employees in a bargaining unit. In that case it was deemed that the benefit was not a raid on the public finances for a particular employee because of the give and take of negotiations (consideration for the benefit, as discussed above) and it applied to the whole bargaining unit.

Because of the negotiation and breadth of the benefit, it was found to be within the competence of the union and the government to negotiate and include such term in the contract. *Syracuse Teachers Asso. v Bd. of Educ.*, 42 AD2d 73, 76 [4th Dept 1973].

However, unlike *Coates*, *Teachers Assoc.* and *Syracuse Teachers*, but more like the employee in Comptroller opinion number 60-659, Mr. Riccaldo is singled out for the benefit conferred pursuant to GML § 92 and the similarly worded County Law § 207. As with that employee, it is my opinion that the County Legislature may not authorize paid leave of absence for a particular employee in the absence of a pre-existing policy permitting such a leave. Which policy itself must make the leave a benefit incidental to the service to the County government, not a benefit in the place of service to the government.

C. *Under the circumstances, the County Legislature has intruded upon the authority of the County Executive and violated the separation of powers embodied in the County Charter*

The power to supervise, direct and control the administration of all departments of the county government is reserved to the County Executive. RCCL § C3.02.

The Legislature is the policy and appropriating branch of government. RCCL § C2.01. In addition, by County Law § 215, the County Legislature is the branch of County government responsible for the "general care and control of the corporate real and personal property of the county."

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See RCC § 66-3(B)

The question has arisen, which branch of County government has authority to grant a leave of absence to Mr. Riccaldo and to determine whether or not such the leave is paid. The answer to that question is not expressly stated under the County Charter or any other applicable law.

1. *Powers of the County Legislature*

The County Legislature has the exclusive power to legislate, appropriate and determine policy for the County government. See Rockland County Charter § 2.01 (preamble). With respect to personnel matters in particular, the Legislature is granted the powers:

- To exercise all powers of local legislation in relation to enacting, amending or rescinding local laws, legalizing acts or resolutions, which shall all be binding upon the County Executive, the Legislature and all department heads.; RCC § C2.01(c)
- To create and abolish positions and to fix the compensation of all officers and employees paid from county funds . . . RCC § C2.01(f), and
- To approve any extensions of appointments to temporary positions with an annualized salary of \$75,000 . . . RCC § 2.01(m).

Of course, *within* the Legislative branch of government, the Legislature is the day to day administrator and the appointing authority for its employees. Mr. Riccaldo however, is an employee in the executive branch of government, whose appointing authority is the head of the Division of Facilities in the Department of General Services (which at this time, has no Commissioner).

2. *Powers of the County Executive and within the executive branch*

The Rockland County Executive in particular, has a suite of powers and responsibilities related to the management and administration of the County government. He is the chief administrative officer of the County (RCC § C3.02(preamble) and (s)); he supervises and directs the internal organization of the departments whose heads he appoints (RCC § C3.02(a)); he is the chief budget officer (RCC § C3.02(b)); appoints temporary employees (RCC § C3.02(e)); appoints personnel in his office (RCC § C3.02(h)); sends officers and employees to conferences (RCC § C3.02(i)); authorizes extensions of sick leaves (RCC § C3.02(k)); he is the chief administrative officer of the County (RCC § C3.02(s)); and he is responsible for the exercise of all executive and administrative powers in relation to any and all functions of County government not otherwise specified in the Charter Law and has all necessary incidental powers to perform and exercise any of the duties and functions described in the Charter or otherwise lawfully designated to him.

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Included in those other powers, he has the responsibility to develop plans and has the power to remedy budget imbalances. The County's Budget Controls (Laws of Rockland County (LRC) § 5-46(B)) provide that,

The County Executive shall maintain control, at all times, over the expenditures of each administrative unit, officer, employee and the financial activity of the County in accordance with the provisions of the Charter and this code. [Note: which would include, following all valid local laws and resolutions, including budget resolutions, of the County Legislature, see RCCL § C3.02(x)].

Implicit in those responsibilities is the power within the office of the County Executive to meet them. See RCCL § C3.02(x) ("he or she shall have and be responsible for the exercise of all executive and administrative powers in relation to any and all functions of county government not otherwise specified in the Charter Law and have all necessary incidental powers to perform and exercise any of the duties and functions specified herein or lawfully designated to him or her.").

I am advised that presently the appointing authority for the Division Facilities in the Department of general Services, is the Director of Facilities, Mr. Robert Gruffi. In the absence of a Commissioner of General Services, Mr. Gruffi is under the direct supervision of the County Executive.

Rockland County Civil Service Rules, Rule XIX deals with Leave of Absence, stating:

RULE XIX*

LEAVE OF ABSENCE

1. A leave of absence without pay may be granted by the appointing authority in conformance with the rules and regulations established by the appropriate legislative body or with the provisions of an appropriate labor agreement, provided, however, that this section shall not be construed to authorize any employment beyond the time at which it would otherwise terminate by operation of law, rule, or regulation.
2. A leave of absence without pay, not to exceed four years, shall be granted by an appointing officer to an employee who is a veteran of the Armed Forces of the United States, providing such a leave of absence is for the purpose of taking courses under the educational benefits provided for in Title 38, United States Code or under a New York State Board of Regents War Service Scholarship, Education Law, Section 614. An employee taking such a leave shall be reinstated to his/her position, provided he/she makes application for such reinstatement within sixty days after the termination of his/her courses of study.

Upon this body of law and regulation, one may fairly reach the conclusion that the Legislature stepped into the realm of the Executive in granting a leave of absence to a particular individual. It is the Legislature's role to provide the rules and policies for a leave of absence, but not to administer them for particular employees other than its own.

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See RCC § 66-3(B)

Similarly, the Legislature is not permitted to direct the Commissioner of Personnel, as it does in this proposed Resolution. The Commissioner of Personnel is an employee of the Executive Branch of government, who by Charter, is appointed by, and reports to the County Executive.

D. *Other issues related to the effect of the proposed Resolution*

In addition to the matters discussed above, I also note that although the Legislature represents that CSEA commits to compensating the County, there is no current agreement supporting that contention. At this point, any money that CSEA would pay the County would be a gift to the County, not a contractual payment.

Also, the resolved clause that purports to bind future legislators to the effect that "the Legislature commits to pass successive resolutions to accommodate William Riccaldo's term(s) of office, on an annual basis so long as the terms of the second Resolved clause herein continue" is illusory. This resolution can be changed by any future resolution or local law of the Legislature that seeks to do so. It is, at best, a memorialization of the sentiments of these Legislators at the present moment, with no binding effect.

Also, NYS Labor Law 209-a prohibits the County from refusing to continue all the terms of an expired agreement until a new agreement is negotiated. In this case the contract provides that Mr. Riccaldo's term is limited to a 10-year maximum. Doing an "end around", by artificially increasing that 10-year term by means of a tailored resolution to pay Mr. Riccaldo for time not worked may be a violation of the Section 209-a, a part of the Triborough amendment to the Taylor Law. The union too has a duty it may not breach, the duty of fair representation to public employees it represents. Civil Service Law § 209-a(2)(c).

In this case, this special deal for Mr. Riccaldo, outside the purview of the collective bargaining agreement (which bars his continued release time), may be a violation of the Civil Service Law. Cf. *Civil Serv. Emples. Ass'n, Local 1000 v City of Troy*, 223 A.D.2d 825, 636 N.Y.S.2d 455, [3d Dep't 1996] (city respondents attempted to circumvent proper collective bargaining procedures, in violation of CLS Civ S § 209-a, by negotiating directly with city employees rather than with their appointed representatives).

cc: *By hand and email delivery*
Legislature of the County of Rockland

By email only
Stephen J. Powers, Director of Public Policy and Intergovernmental Relations
Toney Earl, Chairperson of the Legislature

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See RCC § 66-3(B)

Laurence O. Toole, Clerk to the Rockland County Legislature
Elana Yeger, Senior Legislative Counsel
Alejandra Silva-Exias, Legislative Counsel

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See RCC § 66-3(B)*

STATE OF NEW YORK)
) ss.:
COUNTY OF ROCKLAND)

I, the undersigned, Clerk to the Legislature of the County of Rockland DO HEREBY CERTIFY that the attached is an original resolution of such Legislature, duly adopted on the 7th day of August 2018 by a majority of the members elected to the Legislature while such Legislature was in regular session with a duly constituted quorum of members present and voting.

I FURTHER CERTIFY that at the time said resolution was adopted said Legislature was comprised of seventeen members.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Legislature this 8th day of August 2018.

Date sent to the County Executive:
August 8, 2018

DISAPPROVED

Edwin J. Day, County Executive
County of Rockland



Laurence O. Toole, Clerk
Rockland County Legislature

8/29/18

Date

RESOLUTION NO. 416 OF 2018

Introduced by:

Hon. Toney L. Earl, Sponsor
 Hon. Alden H. Wolfe, Sponsor
 Hon. Michael M. Grant, Co-Sponsor
 Hon. Harriet D. Cornell, Co-Sponsor
 Hon. Philip Soskin, Co-Sponsor
 Hon. Lon M. Hofstein, Co-Sponsor
 Hon. Jay Hood, Jr. Co-Sponsor

Referral No. 7345
 August 7, 2018

**RESOLUTION NO. 416 OF 2018
 RESOLUTION AUTHORIZING A PAID LEAVE OF ABSENCE FOR WILLIAM RICCALDO
 TO ACCOMMODATE HIS SERVICE AS CSEA REGION PRESIDENT**

HOOD, JR./ENTIRE LEGISLATURE: UNAN.

WHEREAS, William Riccaldo has been the Region 3 President for the Civil Service Employees Association, Inc., Local 1000, AFSCME, AFL-CIO ("CSEA") since 2008 and as such, he has been on a paid leave of absence from his position with Rockland County pursuant to the most recent collective bargaining agreement between the County and CSEA; and

WHEREAS, according to the CSEA contract, Mr. Riccaldo's paid leave began in January of 2008, and was to be renewed one year at a time up to a maximum of 10 years, and expired in January of 2018; and

WHEREAS, during Mr. Riccaldo's Paid Leave of Absence, CSEA has fully reimbursed the County for his full salary and fringe benefits, resulting in the County being made whole for his paid leave; and

WHEREAS, Mr. Riccaldo was informed by letter dated June 21, 2018 that his leave release had expired and he was expected to return to work by July 9, 2018; and

WHEREAS, although the governing provision of the CSEA collective bargaining agreement expired, Mr. Riccaldo requested that the County continue to accommodate him in order for him to continue to serve as Region 3 President for the CSEA, which is permissible under County Law §207 and General Municipal Law §92; and

WHEREAS, NYS County Law §207 governs Leaves of Absences and specifies that "the [Legislature] shall have power to fix and regulate the granting with or without pay of vacations, sick leaves and leaves of absence, to employees paid from county funds" ... and "Leaves of absences shall not be in excess of one year;" and

WHEREAS, General Municipal Law §92 states that "The governing board of each county... by local law, ordinance or resolution, ... may grant vacations, sick leaves and leaves of absence to its officers or employees with or without pay"; and

WHEREAS, Mr. Riccaldo's current term for CSEA Region 3 President expires February 29, 2020; and

WHEREAS, CSEA commits to continue to reimburse Rockland County for Mr. Riccaldo's full salary and fringe benefits; and

WHEREAS, The Budget and Finance Committee of the Legislature has met, considered and unanimously approved this resolution; now therefore be it

RESOLVED, that the Commissioner of Personnel is hereby authorized to issue a Paid Leave of Absence to William Riccaldo to accommodate him to serve as Region 3 President for the CSEA, effective July 11, 2018; and, be it further

RESOLVED, that this Resolution and said approval for Paid Leave of Absence is contingent upon the following requirements:

1. Mr. Riccaldo shall not accrue any leave credits nor be eligible for any leave with pay pursuant to Article XIV of the CSEA/Rockland County collective bargaining agreement until his paid leave of absence terminates;
2. CSEA, Inc. shall reimburse Rockland County in full for Mr. Riccaldo's gross salary, health insurance benefits, dental insurance benefits, optical insurance benefits, and retirement benefits paid by the County to Mr. Riccaldo or on behalf of Mr. Riccaldo; and
3. Mr. Riccaldo shall provide at least 45 days written notice to the County of any intention to return to duty with County government.

and, be it further

RESOLVED, that said paid leave of absence is authorized for a period not to exceed one year, effective July 11, 2018 through July 10, 2019; and, be it further

RESOLVED, That the Legislature commits to pass successive resolutions to accommodate William Riccaldo's term(s) of office, on an annual basis so long as the terms of the second Resolved clause herein continue; and, be it further

RESOLVED, That the Rockland County Personnel Department shall carry out all such administrative tasks as are required and necessary to further the purport of this Resolution; and, be it further

RESOLVED, the Clerk to the Legislature is hereby directed to send a copy of this resolution to the Rockland County Commissioner of Finance, the Rockland County Commissioner of Personnel, and William Riccaldo, CSEA, Inc.

LG-2018-62

ELY

7/26/18

8/2/18, 8/8/18/dmg



Rockland County

Ed Day, Rockland County Executive

OFFICE OF THE COUNTY ATTORNEY

11 New Hempstead Road
New City, New York 10956
Phone: (845) 638-5180 Fax: (845) 638-5676

Thomas E. Humbach
County Attorney

July 6, 2018

Via E-Mail & Overnight Mail

Daren J. Rylewicz, Esq.
General Counsel
Civil Service Employees Association
Capitol Station
PO Box 7125
143 Washington Avenue
Albany, New York 12224-0125

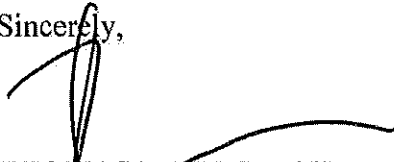
RE: **WILLIAM RICCALDO**

Dear Mr. Rylewicz:

Following up on your request for a leave of absence for William Riccaldo. The County Director of Facilities Management sent a letter to Mr. Riccaldo. A copy is of the letter attached for your information.

In light of this offer being made, your time to accept or return to work is hereby extended until Wednesday, July 11, 2018.

Sincerely,



THOMAS E. HUMBACH
County Attorney



Rockland County

Ed Day, Rockland County Executive

FACILITIES MANAGEMENT

Dr. Robert L. Yeager Health Center
50 Sanatorium Road, Building A
Pomona, New York 10970

Phone: (845) 364-2958 Fax: (845) 364-3810

Robert H. Gruffi, P.E. LEED AP
Director, Facilities Management

July 6, 2018

Via Overnight Mail & E-mail

William Riccaldo
10 Delloro Street
West Haverstraw, NY 10993

Dear Mr. Riccaldo,

As suggested by your attorney, pursuant to N.Y. General Municipal Law §92, the County offers you a leave of absence to pursue the work of your elected office in a labor organization. This leave of absence will become effective upon your written acceptance along with written proof of your current status as an elected official of a union. This leave of absence shall expire in 1-year, or upon expiration of your term of office, whichever occurs first. It is renewable at the sole discretion of the County of Rockland.

In light of this offer being made, your time to accept or return to work is hereby extended until Wednesday, July 11, 2018.

Sincerely,

Robert H. Gruffi, P.E., LEED, AP
Director, Facilities Management

RHG/dm

cc: Lori Gruebel, Commissioner of Personnel
Tom Humbach, County Attorney

FACILITIES MANAGEMENT
Dr. Robert L. Yeung, Health Officer
50 Samuelson Road, Suite 100
Pomona, New York 10970
Phone: (845) 364-2935

Robert H. Griffin, Director
Director, Facilities Management

July 13, 2018


William Riccaldo
10 Delloro Street
West Haverstraw, NY 10993

Dear Mr. Riccaldo,

We have been informed by your counsel and have received your letter stating that you will not be returning to work at the County of Rockland. Since you are an elected official with the CSEA, the County will place you on an unpaid leave of absence per this statute.

Since you have exceeded the duration set forth in your leave of absence, your leave of absence shall be provided pursuant to the approved leave of absence. For clarification, this is not an extension of your leave of absence. Your leave of absence is effective 7/1/18.

Very truly yours,


Robert H. Griffin, Director
Director, Facilities Management

RHG/30

From: Humbach, Thomas [<mailto:HumbachT@co.rockland.ny.us>]
Sent: Thursday, July 19, 2018 2:24 PM
To: Daren J Rylewicz
Subject: William Riccaldo

EXTERNAL Email

Dear Mr. Rylewicz,

I am sorry I missed your calls, I have been in meetings. I write to you to ensure there is no misunderstanding.

With respect to Mr. Riccaldo's position, the County has, in accordance with GML § 92(2) and County Law § 207, placed Mr. Riccaldo on leave of absence. The leave of absence is unpaid.

I understand that the union wishes to continue the prior arrangement, pursuant to which the County kept Mr. Riccaldo on the payroll as an employee, and the union reimbursed the County for Mr. Riccaldo's salary and benefits. That arrangement was made pursuant to a negotiated contract term, ratified in June 2008.

However, as you have pointed out, a leave of absence is allowed under the GML and County Law. That leave of absence has been awarded. Since the CSEA has been reimbursing the County for Mr. Riccaldo's salary and benefits for the past 10 years anyway, there is nothing (that the County knows of) which would now prevent the CSEA from paying that amount directly to Mr. Riccaldo.

The contract term contained in the CSEA Collective Bargaining Agreement, Article XX, para. 20, expressly limits that release time arrangement to a 10 year period for any given employee. The contract term might be renegotiated, and I understand it has been proposed by Mr. Sparber. However, at present, Mr. Riccaldo's release time has been exhausted. Frankly, it would be a breach of contract to continue in the same course.

If you have any questions or concerns, please do not hesitate to contact my office.

Very truly yours,
Thomas E. Humbach
County Attorney